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March 23, 2007

Ms. Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street NW
Washington, DC 20006-1506

Re: Proposed Rule Harmonization

Dear Ms. Sweeney:

The Investment Company Institute¹ supports NASD's efforts to harmonize NASD and NYSE rules relating to branch offices. We recommend that, as part of this harmonization, the personal residences of mutual fund distributors and of principals who approve sales literature and advertising be included within the definition of "non-branch location" so long as no sales functions are conducted at the location and they are not held out to the public as branch offices. For the reasons explained below, we believe this approach is a sensible way to treat these locations without compromising the investor protection of the branch office rules.

I. PERSONAL RESIDENCES OF MUTUAL FUND DISTRIBUTORS

A. The Business of Mutual Fund Distributors

Unlike other underwriters of securities that sell shares through broker-dealers, it is not uncommon for a mutual fund's principal underwriter² to use wholesalers to promote the sale of fund

¹ The Investment Company Institute (ICI) is the national association of the U.S. investment company industry. More information about the ICI is attached to this letter.

² A mutual fund's principal underwriter would be a registered broker-dealer that is a member of NASD.

shares and other investment products by retail broker-dealers and other financial intermediaries.³ Wholesalers are associated persons (registered representatives) of the underwriter who typically report to regional distributors⁴ who, in turn, report to a supervisor at the principal underwriter.

Typically, regional distributors do not meet directly with prospective investors, nor do they make investment recommendations to retail investors.⁵ Instead, their role is to educate financial intermediaries about the funds they represent and encourage the intermediaries to offer and sell those funds to investors. It is not uncommon for regional distributors to work out of their homes and cars, spending much of their time traveling to meet with intermediaries or holding educational seminars or other promotional events. The vast majority of their work is usually performed away from their homes or their principal underwriter's offices.

Business-related activities conducted in the homes of these regional distributors are usually limited to phone calls and emails (on the registered broker-dealer's email system) involving the principal underwriter, distributors, wholesalers, or financial intermediaries; completing travel and expense reports; drafting reports on their meetings with intermediaries; and reviewing documents forwarded to and from the principal underwriter. Most, if not all, of these activities could take place at any location.

2. The Treatment of Distributors under NASD's Definition of "Branch Office"

In its current form, NASD Rule 3010(g)(2) excludes primary residences from the definition of "branch office" provided certain conditions are met, unless the residence is used to supervise the activities of an associated person at another location. The primary residences of mutual fund regional distributors often are required to register as branch offices because they are used to supervise wholesalers.

Regional distributors' use of their homes for business does not raise any of the customer protection concerns the NASD seeks to address by requiring certain locations to register as branch offices. There are no required books and records of the principal underwriter maintained at these locations. The regional distributor's "tools of the trade" – sales literature, presentations, and

³ Other investment products offered by the management company through the fund's principal underwriter might include, for example, 529 plans or separate accounts. As used in this letter, the term "funds" includes these additional products.

⁴ Some principal underwriters use other terms, such as regional managers or divisional directors, to describe the persons who are responsible for supervising the activities of the wholesalers. Our request relates to any persons whose functions are those of a regional distributor as described in this letter.

⁵ A regional distributor might meet with retail investors while making a joint presentation with representatives of a retail broker-dealer at a seminar organized by the retail broker-dealer for its clients. This would not occur at the regional distributor's home, nor would it result in the creation of required records.

prospectuses – are created and maintained at the principal place of business of the principal underwriter. The distributor's business correspondence is subject to the principal underwriter's supervision and maintained, to the extent required, by the principal underwriter. The distributor's emails are sent and received through the principal underwriter's email systems as required by the NASD's rules. There are no customer transactions at or through these locations. There are no interactions with retail customers occurring at these locations – nor are these locations held out to the public as locations from which the fund's principal underwriter (or any other broker-dealer) conducts business. In fact, but for the supervision of wholesalers from these locations, these locations would qualify for the exception in the definition of "branch office" for personal residences or they would qualify under the definition of "non-branch location" as a location engaged solely in investment banking services.

The supervisory activities occurring from these residences are so limited that they should not necessitate their registration as branch offices. These supervisory activities largely consist of providing the wholesalers the tools of the trade (as described above), approving travel and expense reports, holding conference calls, mentoring the wholesalers and monitoring their activities, and reviewing management reports.

II. PRINCIPALS WHO REVIEW ADVERTISING AND SALES LITERATURE

It is not uncommon for principal underwriters of mutual funds – particularly self-distributed funds – to have principals whose sole or primary function is to review advertising and sales literature. These principals are able to conduct the same review at a non-branch location, such as their home, as they would in a branch office of the distributor, with the required records documenting their review maintained by the underwriter. The NASD's current rules require any location used by a principal to review advertising or sales literature to be registered as branch office (*i.e.*, as an office of supervisory jurisdiction).

We believe the review of advertising by a principal is similar to the final approval of research reports by a research analyst. Under the NYSE's current rules and under NASD's proposed rule revision, a location such as the personal residence of the research analyst will qualify as a non-branch location so long as it is used to engage solely in final approval of research reports, no sales functions are conducted from the location, and it is not held out to the public as a branch office. We recommend that NASD treat the home of a principal who approves other types of advertising and sales literature the same way. Thus, a principal's personal residence will be a non-branch location of the member if it is used solely for the review of advertising and sales literature, no sales functions are conducted from the location, and it is not held out as a branch office.

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Accordingly, the Institute respectfully requests that NASD revise the definition of "non-branch location" to include the personal residences of regional distributors and principals who review advertising and sales literature subject to the conditions discussed above. If you have any questions about our request, please contact me by phone (202-326-5825) or email (tamara@ici.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara K. Salmon". The signature is fluid and cursive, with the first name "Tamara" being more prominent.

Tamara K. Salmon
Senior Associate Counsel

cc: Kosha K. Dalal, Associate General Counsel
Office of the General Counsel

About the Investment Company Institute

The Investment Company Institute's membership includes 8,839 open-end investment companies (mutual funds), 658 closed-end investment companies, 363 exchange-traded funds, and 4 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$10.445 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 93.9 million shareholders in more than 53.8 million households.